

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2002-154-E - ORDER NO. 2002-755
OCTOBER 25, 2002

IN RE: Leona Crouch/Citizens for Responsible)	ORDER OVERRULING
Power,)	OBJECTION AND
)	DENYING MOTION
Complainants,)	
)	
vs.)	
)	
Greenville Generating Company, LLC.,)	
)	
Respondent.)	

This matter comes before the Public Service Commission (the Commission) on an Objection to Commission's Refusal to File Motion for Reconsideration filed by Leona Crouch, Individually and as President of Citizens for Responsible Power (Mrs. Crouch). Greenville Generating Company, LLC (Greenville Generating or the Company) has filed a Response to the Objection. For the reasons stated below, the objection is overruled and the Motion for Reconsideration is denied as untimely.

On September 6, 2002, this Commission issued Order No. 2002-643, which dismissed the Complaint in this matter. According to records provided by Mrs. Crouch, she received this Order on September 17, 2002. She then attempted to file a Motion to Reconsider Order No. 2002-643 by mail on September 28, 2002, the eleventh day after her receipt of the Order. Once received by General Counsel, this document was immediately returned to Mrs. Crouch as being untimely filed, pursuant to the ten-day

filing requirements of S.C. Code Ann. Section 58-27-2150 (1976). Mrs. Crouch then filed an Objection to Commission's Refusal to File Motion for Reconsideration. Greenville Generating then filed a Response to the Objection.

Mrs. Crouch's objection first alleges that her Motion is a request for reconsideration and falls under the 20 day rule established by R. 103-881(B). She states that S.C. Code Ann. Section 58-27-2150 (1976) only deals with rehearings, not reconsiderations of Commission orders, thus the twenty days allowed by R. 103-881(B) is applicable, not the ten days of Section 58-27-2150. These allegations are without merit. First, we would note that Regulation 103-881(B) states that a Petition for Reconsideration shall be subject to the same statutory parameters as a Petition for Rehearing. Consequently, the General Assembly does not differentiate between pleadings requesting reconsideration and those requesting rehearing, as per the regulation. Further, it should be noted that the 20 day time period in the regulation for requesting review only applies if Section 58-27-2150 (1976) does not apply. See Regulation 103-881(B). We hold that Section 58-27-2150 does apply to the present case. Therefore, Mrs. Crouch's first allegation of error is therefore without merit.

Second, Mrs. Crouch states that even if the ten-day time frame was correctly applied, her time to file a reconsideration request did not expire until Monday, September 30, 2002. Unfortunately, Mrs. Crouch has miscalculated the ten-day period. The tenth and final day to submit a reconsideration request was Friday, September 27, 2002, since she received her copy of Order No. 2002-643 on Tuesday, September 17, 2002. Had the tenth day fallen on Saturday, September 28, 2002, then Mrs. Crouch would have been

correct in stating that she had until Monday, September 30, 2002 to submit her document. Unfortunately, since the tenth day fell on Friday, her time expired that day. Mrs. Crouch's second allegation of error is unavailing.

Third, Mrs. Crouch alleges that if there was conflict between rules promulgated by the Commission and any other authority, the default rules would be the South Carolina Rules of Civil Procedure. Mrs. Crouch alleges that the time period calculated by the Rules of Civil Procedure did not expire until September 30, 2002, and that her Motion was therefore timely. This allegation also is without merit, since South Carolina Code Ann. Section 58-27-2150 (1976) governs the situation. The Rules of Civil Procedure do not even come into play on this question.

As further support for the proposition that the ten-day rule of S.C. Code Ann. Section 58-27-2150 (1976) governs the present situation, we would note that S.C. Code Ann. Section 58-33-310 (1976), which is the appeal section of the Utility Facility Siting and Environmental Protection Act (the Siting Act), refers to a statute in Chapter 27, the electric portion of our Utility Code. Accordingly, we believe that the rehearing statute in the electric chapter, Section 58-27-2150, is applicable in appeals from Siting Act matters. Mrs. Crouch's complaint arose from a Siting Act matter, that is, our prior certification of Greenville Generating Company plant. This is additional support for our use of the ten day rehearing/reconsideration period found in Section 58-27-2150 (1976).


We would also note that S.C. Code Ann. Section 58-27-1990 (1976) states that the Commission may dismiss any complaint without a hearing if in its opinion a hearing is not necessary in the public interest or for the protection of substantial rights. Since this

is found in the same chapter as Section 58-27-2150 (1976), we believe that the ten day reconsideration period is applicable whether or not a hearing was actually held in a contested matter.

Mrs. Crouch simply missed the required ten day period by attempting to file on the eleventh day. We would note that the South Carolina Supreme Court has consistently held that the failure of a party to timely seek rehearing or appeal is a jurisdictional defect and the reviewing body has no discretion to entertain the requested review. See, e.g., Ackerman v. 3-V Chem., Inc., 562 S.E. 2d 613, 615 (S.C. 2002). Accordingly, Mrs. Crouch's objection is overruled, and the Motion for Reconsideration is denied, because it was untimely filed under Section 58-27-2150. Since the matter was not filed within the time frame prescribed in the statute, we lack jurisdiction to consider the matter.

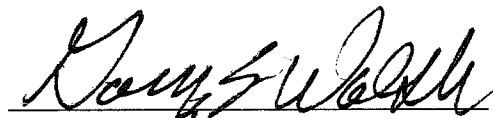
This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Mignon L. Clyburn
Chairman

ATTEST:



Gary E. Walsh
Executive Director

(SEAL)